

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed April 6, 2009. At the time of the Office Action, Claims 1-61 were pending in the Application and stand rejected. Applicant amended certain Claims to expedite this prosecution. The amendments to the claims are not the result of any prior art reference and, thus, does not narrow the scope of the claim. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 102 Rejection

Claims 1-5, 11-12, 18-20, 26-28, 34-36, 42-46, 49-50, 52-55, 58-59, and 61 as being anticipated by Veeneman et al. (hereinafter “*Veeneman*”). This rejection is respectfully traversed for the following reasons.

Independent Claim 1 is Patentable over Veeneman

Applicant respectfully reminds the Examiner that a claim is anticipated only if each element as set forth in the claim is either found, expressly or inherently described, in a single prior art reference.¹ In addition, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claims” and “[t]he elements must be arranged as required by the claim.”² In regard to inherency of a reference, “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.”³ Thus, in relying upon the theory of inherency, an Examiner must provide a

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

³ MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

Independent Claim 1, as amended, recites “...each of the member SPVCs are associated with a respective Internet Protocol (IP) precedence level, the precedence levels being used in bumping rules for the IP packets such that the QoS parameter is maintained as the IP packets propagate from the source end to the destination end...” No reference of record, including *Veeneman*, offers an architecture in which this occurs. First, *Veeneman* fails to define **any type of a precedence level**. Second, *Veeneman* fails to offer such a precedence level **being used in the context of bumping rules**. Third, in no event does *Veeneman* show any such activities being linked to maintaining a QoS level.

Note also that, as a separate matter, the simple routing configuration of *Veeneman* is incapable of maintaining the QoS per connection characteristic, per SPVC. The term ‘QoS’ is recited only a single time in *Veeneman*, which fails to account for these QoS limitations provided for in Independent Claim 1. Applicant has reviewed *Veeneman* in its entirety and finds nothing that would be relevant to such operations.

The Examiner generically cites portions of *Veeneman* for all of these limitations. Specifically, the Examiner cites Column 3-4, lines 64-2 of this reference, which provides:

When the BWA search ends up on a 36170 node inside the cloud (i.e. when it ends up on a node having at least one functioning SPVC VPCL with the same QoS, in one of its trunk group's bandwidth partition, as the path being routed),

4

it will continue its search using SPVC VPC links as well as the non-SPVC links. It will treat the SPVC VPCLs as having

Thus, what is evident from this passage is that *Veeneman* (in this cited searching operation) fails to offer any system in which **each of the connection characteristics** includes a

⁴ MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

respective quality of service (QoS) parameter that is **maintained** as Internet Protocol (IP) packets propagate from the source end, over the communication network, and to the destination end.” There is no indication of specific QoS parameters being applied to each SPVC: much less how such parameters would be maintained as IP packets traverse a network, as outlined by Independent Claim 1. Neither FIGURE 2, nor FIGURE 3 of *Veeneman* discloses these elements.

All these important limitations are provided in Independent Claim 1, but no reference of record includes such elements. In addition, the other Independent Claims recite limitations that are similar, but not identical, and are therefore allowable over the proposed combination(s) using a similar rationale. In addition, the respective dependent claims from these Independent Claims should be allowable using analogous reasoning.

Section 103 Rejection

Claims 6-7, 13-14, 21-22, 29-30, and 37-38 as being unpatentable over *Veeneman* in view of Allan et al. (hereinafter “*Allan*”). Claims 8, 15, 23, 31, and 39 as being unpatentable over *Veeneman* in view of *Allan* as applied to Claim 7, further in view of Chang et al. (hereinafter “*Chang*”). Claims 9, 16, 24, 32, 40, 47, and 56 are rejected as being unpatentable over *Veeneman* in view of *Chang*. Claims 10, 17, 25, 33, 41, 48, 51, 57, and 60 as being unpatentable over *Veeneman* in view of Hamedani et al. (hereinafter “*Hamedani*”).

Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.⁵

⁵ See M.P.E.P. §2142-43.

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each claim limitation of the Independent Claims. This has been evaluated extensively above in the preceding §102 analysis.

For at least these reasons, all of the pending claims have been shown to be allowable as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

No additional fees are believed due. However, please apply any other charges or credit any overpayment to Deposit Account No. 50-4889 of PATENT CAPITAL GROUP, referencing the attorney docket number referenced above.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at (214) 823-1241.

Respectfully submitted,

Patent Capital Group
Attorneys for Applicant

/Thomas J. Frame/

Thomas J. Frame
Reg. No. 47,232

Date: July 6, 2009

Customer No. 86421